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**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

AUGUST IMAGE, LLC and CREATIVE
PHOTOGRAPHERS INC.,

Plaintiffs,

v.

BREATHE HEAVY LLC,

Defendant.

COMPLAINT FOR COPYRIGHT INFRINGEMENT
(INJUNCTIVE RELIEF DEMANDED)

Plaintiffs AUGUST IMAGE, LLC and CREATIVE PHOTOGRAPHERS INC., by and through their undersigned counsel, bring this Complaint against Defendant BREATHE HEAVY LLC for damages and injunctive relief, and in support thereof state as follows:

SUMMARY OF THE ACTION

1. Plaintiffs AUGUST IMAGE, LLC and CREATIVE PHOTOGRAPHERS INC. (collectively “Plaintiffs”) bring this action for violations of exclusive rights under the Copyright Act, 17 U.S.C. § 106, to copy and distribute Plaintiffs’ original copyrighted Works of authorship.

2. AUGUST IMAGE, LLC ("August") is a unique agency model offering a boutique experience for clients worldwide. Beyond the unique creative caliber and exclusivity of August's photography, their deep knowledge of their collection and focus on the highest-level of customer service make August an exceptional visual resource. August is dedicated to representing an elite group of portrait, lifestyle, beauty, & fashion photographers for editorial and commercial licensing. August is the exclusive representatives for the work of some of the most creative and innovative contemporary photographers including Martin Schoeller, Art Streiber, Camilla Akrams, Ben Hassett, Kenneth Willards, Joe Pugliese, and many more.

3. CREATIVE PHOTOGRAPHERS INC. ("CPI") was founded in 1994 by Geoffrey and Pamela Katz with the vision to create an exclusive independent "boutique style" photo agency that would provide quality service to its clients and personal attention to its artists. CPI continues to build on its original philosophy that quality, content, and sales strength bring success. This philosophy is prevalent throughout CPI's history and continues to be the driving force of the organization today.

4. Defendant BREATHE HEAVY LLC ("BHLLC") originated in June 2004 as an internet website for fans of Britney Spears, and was in operation for ten years before morphing into a pop music news website in 2014. BHLLC features breaking news, music video and song premieres, album and concert reviews, editorial pieces, and interviews with artists. At all times relevant herein, BHLLC operated the internet website located at the URL www.breatheheavy.com (the "Website").

5. Plaintiffs allege that BHLLC copied Plaintiffs' copyrighted Works from the internet in order to advertise, market and promote its business activities. BHLLC committed the

violations alleged in connection with BHLLC's business for purposes of advertising and promoting sales to the public in the course and scope of BHLLC's business.

JURISDICTION AND VENUE

6. This is an action arising under the Copyright Act, 17 U.S.C. § 501.

7. This Court has subject matter jurisdiction over these claims pursuant to 28 U.S.C. §§ 1331, 1338(a).

8. Defendant is subject to personal jurisdiction in Nevada.

9. Venue is proper in this district under 28 U.S.C. § 1391(b) and (c) and 1400(a) because the events giving rise to the claims occurred in this district, Defendant engaged in infringement in this district, Defendant resides in this district, and Defendant is subject to personal jurisdiction in this district.

DEFENDANT

10. Breathe Heavy LLC is a Nevada limited liability company, with its principal place of business at 10697 Centennial Parkway, #2039, Las Vegas, Nevada, 89166, and can be served by serving its Registered Agent, Mr. Jordan Miller, at the same address.

THE COPYRIGHTED WORKS AT ISSUE

Attached hereto as **Exhibit 1** is a table listing Copyright Titles, Registration Numbers and Registration Issue Dates for the copyrighted works infringed by BHLLC, and which are referred to herein as the "Works." Attached hereto as **Exhibit 2** are copies of the Works infringed. Attached hereto as **Exhibit 3** are copies of the Registration Certificates for the Works.

11. Plaintiffs' Works are protected by copyright but are not otherwise confidential, proprietary, or trade secrets.

1 12. At all relevant times, Plaintiffs were the owners of the copyrighted Works at issue
2 in this case.

3 **INFRINGEMENT BY DEFENDANT**

4 13. BHLLC has never been licensed to use the Works at issue in this action for any
5 purpose.

6 14. On a date after the Works at issue in this action were created, but prior to the filing
7 of this action, BHLLC copied the Works.

8 15. On or about May 8, 2018, Plaintiffs discovered the unauthorized use by BHLLC of
9 some of the Works on the Website. Thereafter, additional unauthorized uses of the Works by
10 BHLLC were discovered.

11 16. BHLLC copied Plaintiffs' copyrighted Works without Plaintiffs' permission.

12 17. After BHLLC copied the Works, it made further copies and distributed the Works
13 on the internet to promote the sale of goods and services as part of its pop music fan Website.
14

15 18. BHLLC copied and distributed Plaintiffs' copyrighted Works in connection with
16 BHLLC's business for purposes of advertising and promoting BHLLC's business, and in the
17 course and scope of advertising and selling products and services.
18

19 19. Plaintiffs' Works are protected by copyright but are not otherwise confidential,
20 proprietary, or trade secrets.

21 20. BHLLC committed copyright infringement of the Works as evidenced by the
22 documents attached hereto as **Exhibit 4**.

23 21. Duffy never gave BHLLC permission or authority to copy, distribute or display the
24 Works at issue in this case.
25
26
27

COUNT I

COPYRIGHT INFRINGEMENT

22. Plaintiffs incorporate the allegations of paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Plaintiffs own valid copyrights in the Works at issue in this case.

24. Plaintiffs registered the Works at issue in this case with the Register of Copyrights pursuant to 17 U.S.C. § 411(a).

25. BHLLC copied, displayed, and distributed the Works at issue in this case and made derivatives of the Works without Plaintiffs' authorization in violation of 17 U.S.C. § 501.

26. BHLLC performed the acts alleged in the course and scope of its business activities.

27. BHLLC's acts were willful.

28. Plaintiffs have been damaged.

29. The harm caused to Plaintiffs has been irreparable.

JURY DEMAND

Plaintiffs hereby demand a trial by jury of all issues so triable.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs August Image, LLC and Creative Photographers Inc. pray for judgment against the Defendant Breathe Heavy LLC that:

a. Defendant and its officers, agents, servants, employees, affiliated entities, and all of those in active concert with them, be preliminarily and permanently enjoined from committing the acts alleged herein in violation of 17 U.S.C. § 501;

b. Defendant be required to pay Plaintiffs their actual damages and BHLLC's profits attributable to the infringement, or, at Plaintiffs' election, statutory damages, as provided in 17 U.S.C. § 504;

1 c. Plaintiffs be awarded their attorneys' fees and costs of suit under the applicable
2 statutes sued upon;

3 d. Plaintiffs be awarded pre and post-judgment interest; and

4 e. Plaintiffs be awarded such other and further relief as the Court deems just and
5 proper.

6
7 DATED: May 7, 2021

Respectfully submitted,

8
9 /s/ Marc J. Randazza

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